IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Inventor	:	Dollinger et al.
Assignee	:	Bayer CropScience AG
Serial No.	:	10/591,673
Filed	:	February 19, 2005
For	:	**METHODS FOR COMBATING WEEDS**

DECLARATION

I, Dr. Erwin Hacker, state that I reside at Margarethenstraße 16, 65239 Hochheim, Germany, I am a citizen of Germany; that I am familiar with the subject matter and the prosecution of the instant application Serial No. 10/591,673 filed on February 19, 2005, entitled; METHODS FOR COMBATING WEEDS that I consider myself qualified by my education, knowledge and many years of experience in agricultural chemistry to make this Declaration; and that I have made the following observations:

1. The instantly claimed invention is directed to novel herbicidally active compounds for selectively controlling weeds of the genus *Apera*. In my opinion, the invention is clearly distinguishable from the prior art.

2. The following tests have been carried out under my supervision and my control. Trials have been conducted in the same manner as described in the specification (US 2008/00209932, page 12, right column, paragraphs 0107 to paragraph 0109). The respective dosage of active ingredient (herbicide compound (I) [5-methoxy-4.methyl-2-[(4-methodycarbonyl-2-methylthien-3-yl]sulfonylaminocarbonyl]-2,4-dihydro-3H-1,2,4-triazol-3-one) and of the safener (mefenpyr-diethyl) is given in Table I.

Table I

weed species	**compound (I)** application rate g ai/ha	**mefenpyr-diethyl** (⇔ safener) application rate g ai/ha	**control** %
Apera spica-venti	**7.5**	**22.5**	**97**
Alopecurus myosuroides	7.5	22.5	57
Phalaris spp.	7.5	22.5	43
Poa annua	7.5	22.5	15

3. Table I shows that compound (I) is extremely effective against *Apera spica-venti*), even in combined application with the safener mefenpyr-diethyl (which is added for improving crop safety).
The data reveal that the use of compound (I) is extremely effective concerning the control of *Apera* species.

4. Therefore, it is my opinion that the instant invention is clearly different from and is not obviated by the information disclosed in US 6,964,939.
The data shown in US 6,964,939 were obtained with application rates of 60 g ai/ha (see columns 23/24, Table A1, and Table B5, 1st line each). At these application rates, several weeds are controlled quite well.
By decreasing these application rates by a factor of 8 (7.5g vs. 60g), it is absolutely unexpected for a person skilled in the art, that the weed control concerning *Apera* (see above given Table) remains at a constant high level but that - under identically changed

conditions - other weed species are less good controlled up to a poor weed control level of about 15%, like in case of *Poa annua*.

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5. I conclude that the superior weed control of *Apera* species according to the instant invention is significant and unexpected in view of US 6,964,939.

I declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

Dated this 25th day of July , 2008

Signed: